

TABLE 1 TO PART 772—NOISE ABATEMENT CRITERIA
[Hourly A-Weighted Sound Level _decibels (dB(A)) ¹]

Activity category	Activity Leq(h)	Criteria ² L10(h)	Evaluation location	Activity description
A	57	60	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B ³	67	70	Exterior	Residential.
C ³	67	70	Exterior	Active sport areas, amphitheatres, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails, and trail crossings.
D	52	55	Interior	Auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, schools, and television studios.
E ³	72	75	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A–D or F.
F				Agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing.
G				Undeveloped lands that are not permitted.

¹ Either Leq(h) or L10(h) (but not both) may be used on a project.

² The Leq(h) and L10(h) Activity Criteria values are for impact determination only, and are not design standards for noise abatement measures.

³ Includes undeveloped lands permitted for this activity category.

PART 773—SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM APPLICATION REQUIREMENTS AND TERMINATION

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APPENDIX A TO PART 773—EXAMPLE LIST OF THE SECRETARY'S ENVIRONMENTAL REVIEW RESPONSIBILITIES THAT MAY BE ASSIGNED UNDER 23 U.S.C. 327.

AUTHORITY: 23 U.S.C. 315 and 327; 49 CFR 1.81(a)(4)–(6); 49 CFR 1.85

SOURCE: 79 FR 55398, Sept. 16, 2014, unless otherwise noted.

§ 773.101 Purpose.

The purpose of this part is to establish the requirements for an application by a State to participate in the Surface Transportation Project Delivery Program (Program). The Program allows, under certain circumstances,

the Secretary to assign and a State to assume the responsibilities under the National Environmental Policy Act of 1969 (NEPA) and for environmental review, consultation, or other action required under certain Federal environmental laws with respect to one or more highway, railroad, public transportation, or multimodal projects within the State.

§ 773.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and 49 U.S.C., are applicable to this part. As used in this part:

Classes of projects means either a defined group of projects or all projects to which Federal environmental laws apply.

Federal environmental law means any Federal law, regulation, or Executive Order (E.O.) under which the Secretary of the U.S. Department of Transportation (DOT) has responsibilities for environmental review, consultation, or other action with respect to the review or approval of a highway, railroad, public transportation, or multimodal project. The Federal environmental laws for which a State may assume the

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responsibilities of the Secretary under this Program include the list of laws contained in Appendix A to this part.

Highway project means any undertaking that is eligible for financial assistance under title 23 U.S.C. and for which the Federal Highway Administration has primary responsibility. A highway project may include an undertaking that involves a series of contracts or phases, such as a corridor, and also may include anything that may be constructed in connection with a highway, bridge, or tunnel. The term highway project does not include any project authorized under 23 U.S.C. 202, 203, or 204 unless the State will design and construct the project.

MOU means a Memorandum of Understanding, a written agreement that complies with 23 U.S.C. 327(b)(4)(C) and (c), and this part.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Operating Administration means any agency established within the DOT, including the Federal Aviation Administration, Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration, Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration, National Highway Traffic Safety Administration, Office of the Secretary of Transportation, Pipeline and Hazardous Materials Safety Administration, and Saint Lawrence Seaway Development Corporation.

Program means the “Surface Transportation Project Delivery Program” established under 23 U.S.C. 327.

Public transportation project means a capital project or operating assistance for “public transportation,” as defined in chapter 53 of title 49 U.S.C.

Railroad project means any undertaking eligible for financial assistance from FRA to construct (including initial construction, reconstruction, replacement, rehabilitation, restoration, or other improvements) a railroad, as that term is defined in 49 U.S.C. 20102, including: environmental mitigation activities; an undertaking that involves a series of contracts or phases, such as a railroad corridor; and anything that may be constructed in connection with a railroad. The term rail-

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road project does not include any undertaking in which FRA provides financial assistance to Amtrak or private entities.

State means any agency under the direct jurisdiction of the Governor of any of the 50 States or Puerto Rico, or the mayor in the District of Columbia, which is responsible for implementing highway, public transportation, or railroad projects eligible for assignment. The term “State” does not include agencies of local governments, transit authorities or commissions under their own board of directors, or State-owned corporations.

§ 773.105 Eligibility.

(a) *Applicants.* A State must comply with the following conditions to be eligible and to retain eligibility for the Program.

(1) For highway projects:

(i) The State must act by and through the State Department of Transportation (State DOT) established and maintained in conformity with 23 U.S.C. 302 and 23 CFR 1.3;

(ii) The State expressly consents to accept the jurisdiction of the Federal courts for compliance, discharge, and enforcement of any responsibility assumed by the State;

(iii) The State has laws in effect that authorize the State to take the actions necessary to carry out the responsibilities it is assuming;

(iv) The State has laws in effect that are comparable to the Freedom of Information Act (FOIA) (5 U.S.C. 552), including laws providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

(v) The State has the financial and personnel resources necessary to carry out the responsibilities it is assuming.

(2) For railroad or public transportation projects:

(i) The State must comply with paragraphs (a)(1)(ii) through (v) of this section; and

(ii) The State must have assumed the responsibilities of the Secretary under this part with respect to one or more highway projects.

(b) *Responsibilities.* Responsibilities eligible for Program assignment and

State assumption include all NEPA responsibilities and all or part of the reviews, consultations, and other actions required under other environmental laws, regulations, and E.O.s. Appendix A to this part contains an example list of other environmental laws, regulations, and E.O.s that may be assigned to and assumed by the State. These may include the environmental review responsibilities for the elements of a multimodal project that are within an applicable Operating Administration's jurisdiction. The following responsibilities are ineligible for Program assignment and State assumption:

(1) Conformity determinations required under section 176 of the Clean Air Act (42 U.S.C. 7506);

(2) The Secretary's responsibilities under 23 U.S.C. 134 and 135;

(3) The Secretary's responsibilities under 49 U.S.C. 5303 and 5304;

(4) The Secretary's responsibilities for government-to-government consultation with Indian tribes;

(5) The Secretary's responsibilities for approvals that are not considered to be part of the environmental review of a project, such as project approvals, Interstate access approvals, and safety approvals; and

(6) The Secretary's responsibilities under NEPA and for reviews, consultations, and other actions required under other Federal environmental laws for actions of Operating Administrations other than FHWA, FRA, and FTA.

(c) *Projects.* Environmental reviews ineligible for assignment and State assumption under the Program include reviews for the following types of projects:

(1) Projects that cross State boundaries, and

(2) Projects adjacent to or that cross international boundaries.

(d) *Discretion retained.* Nothing in this section limits an Operating Administration's discretion to withhold approval of assignment of eligible responsibilities or projects under this Program.

§ 773.107 Pre-application requirements.

(a) *Coordination meeting.* The State must request and participate in a pre-application coordination meeting with

the appropriate Division or Regional, and Headquarters office of the applicable Operating Administration(s) before soliciting public comment on its application.

(b) *Public comment.* The State must give notice of its intention to participate in the Program and must solicit public comment by publishing the complete application in accordance with the appropriate State public notice laws not later than 30 days prior to submitting its application to the appropriate Operating Administration(s). If allowed under State law, publishing a statewide notice of availability of the application rather than the application itself may satisfy the requirements of this provision so long as the complete application is made available on the internet and is reasonably available to the public for inspection. Solicitation of public comment must include solicitation of the views of other State agencies, tribal agencies, and Federal agencies that may have consultation or approval responsibilities associated with the project(s) within State boundaries.

(1) The State requesting FTA's responsibilities with respect to public transportation projects must identify and solicit public comment from potential recipients of assistance under chapter 53 of title 49 U.S.C. These comments may include requests for the Secretary to maintain the environmental review responsibilities with respect to one or more public transportation projects.

(2) The State must submit copies of all comments received as a result of the publication of the respective application(s). The State must summarize the comments received, develop responses to substantive comments, and note any revisions or actions taken in response to the public comment.

(c) *Sovereign immunity waiver.* The State must identify and complete the process required by State law for consenting and accepting exclusive Federal court jurisdiction with respect to compliance, discharge, and enforcement of any of the responsibilities being sought.

(d) *Comparable State laws.* The State must determine that it has laws that are in effect that authorize the State to take actions necessary to carry out

the responsibilities the State is seeking and a public records access law that is comparable to FOIA. The State must ensure that it cures any deficiency in applicable State laws before submitting its application.

§ 773.109 Application requirements.

(a) *Highway project responsibilities.* An eligible State DOT may submit an application to FHWA to participate in the Program for one or more highway projects or classes of highway projects. The application must include:

(1) The highway projects or classes of highway projects for which the State is requesting assumption of Federal environmental review responsibilities under NEPA. The State must specifically identify in its application each highway project for which a draft environmental impact statement has been issued and for which a final environmental impact statement is pending, prior to the submission of its application;

(2) Each Federal environmental law, review, consultation, or other environmental responsibility the State seeks to assume under this Program. The State must indicate whether it proposes to phase-in the assumption of these responsibilities, *i.e.*, initially assuming only some responsibilities with a plan to assume additional responsibilities at specific future times;

(3) For each responsibility requested in paragraphs (a)(1) and (2) of this section, the State must describe how it intends to carry out these responsibilities. Such description must include:

(i) A summary of State procedures currently in place to guide the development of documents, analyses, and consultations required to fulfill the environmental review responsibilities requested. For States that have comparable State environmental review procedures, the discussion should describe the differences, if any, between the State environmental review process and the Federal environmental review process, focusing on any standard that is mandated by State law, regulation, executive order, or policy that is not applicable to the Federal environmental review. The State must submit a copy of the procedures with the application unless these are available elec-

tronically. The State may submit the procedures electronically, either through email or by providing a hyperlink;

(ii) Any changes that the State has made or will make in the management of its environmental program to provide the additional staff and training necessary for quality control and assurance, appropriate levels of analysis, adequate expertise in areas where the State is requesting responsibilities, and expertise in management of the NEPA process and reviews under other Federal environmental laws;

(iii) A discussion of how the State will conduct legal reviews for the environmental documents it produces, including legal sufficiency reviews where required by law, policy, or guidance;

(iv) A discussion of how the State will identify and address those projects that without assignment would have required FHWA Headquarters' prior concurrence of the final environmental impact statement under 23 CFR 771.125(c); and

(v) A discussion of otherwise permissible project delivery methods the State intends to pursue, and the process it will use to decide whether pursuing those project delivery methods and being responsible for the environmental review meet the objectivity and integrity requirements of NEPA.

(4) A verification of the personnel necessary to carry out the authority that the State may assume under the Program. The verification must contain the following information:

(i) A description of the staff positions, including management, that will be dedicated to fulfilling the additional functions needed to perform the assigned responsibilities;

(ii) A description of any changes to the State's organizational structure that would be necessary to provide for efficient administration of the responsibilities assumed; and

(iii) A discussion of personnel needs that may be met by the State's use of outside consultants, including legal counsel provided by the State Attorney General or private counsel;

(5) A summary of the anticipated financial resources available to meet the activities and staffing needs identified

in paragraphs (a)(3) and (4) of this section, and a commitment to make adequate financial resources available to meet these needs;

(6) Certification and explanation by the State's Attorney General, or other State official legally empowered by State law to issue legal opinions that bind the State, that the State has legal authority to assume the responsibilities of the Secretary for the Federal environmental laws and projects requested, and that the State consents to exclusive Federal court jurisdiction with respect to the responsibilities the State is requesting to assume. Such consent must be broad enough to include future changes in relevant Federal policies and procedures or allow for its amendment to include such future changes;

(7) Certification by the State's Attorney General, or other State official legally empowered by State law to issue legal opinions that bind the State, that the State has laws that are comparable to FOIA, including laws that allow for any decision regarding the public availability of a document under those laws to be reviewed by a court of competent jurisdiction;

(8) Evidence that the required notice and solicitation of public comment by the State relating to participation in the Program has taken place and copies of the State's responses to the comments;

(9) A point of contact for questions regarding the application and a point of contact regarding the implementation of the Program (if different); and

(10) The State Governor's (or in the case of District of Columbia, the Mayor's) signature approving the application. For the Secretary's responsibilities with respect to highway projects, the top ranking transportation official in the State who is charged with responsibility for highway construction may sign the application instead of the Governor.

(b) *Public transportation project responsibilities.* An eligible State may submit an application to FTA to participate in the Program for one or more public transportation projects or classes of public transportation projects. The application must provide the information required by paragraphs

(a)(1) through (10) of this section, but with respect to FTA's program and the public transportation project(s) at issue. In addition, the application must include:

(1) Evidence that FHWA has assigned to the State, or the State has requested assignment of the responsibilities of, FHWA with respect to one or more highway projects within the State under NEPA; and

(2) Evidence that any potential recipients of assistance under chapter 53 of title 49 U.S.C. for any public transportation project or classes of public transportation projects in the State being sought for Program assignment have received written notice of the application with adequate time to provide comments on the application.

(c) *Railroad project responsibilities.* An eligible State may submit an application to FRA to participate in the Program for one or more railroad projects or classes of railroad projects. The application must provide the information required by paragraphs (a)(1) through (10) of this section, but with respect to the railroad project(s) at issue. In addition, the application must include evidence that FHWA has assigned to the State, or the State has requested assignment of, the responsibilities of FHWA with respect to one or more highway projects within the State under NEPA.

(d) *Multimodal project responsibilities.* The Operating Administration(s) will presume that the responsibilities sought by the State include the Secretary's environmental review responsibilities for multimodal projects' elements that would otherwise fall under the Operating Administration's authority. These responsibilities include establishing appropriate relationships with the other Operating Administration(s) involved in the multimodal project, including cooperating agency, participating agency, and lead or co-lead agency relationships under NEPA. The State must affirmatively reject multimodal environmental review responsibilities in its application if it intends to have the responsibilities remain with the Operating Administration when a multimodal project is involved. In addition, States may:

(1) Request the Secretary's environmental review responsibilities with respect to the highway, railroad, and/or public transportation elements of one or more particular multimodal projects by submitting an application with the information required in paragraphs (a)(1) through (10) of this section, but with respect to the multimodal project(s) at issue. The application must either request highway responsibilities for the multimodal project or include evidence that FHWA has assigned to the State, or the State has requested assignment of, the responsibilities of FHWA with respect to one or more highway projects within the State under NEPA; and

(2) Request, at the same time the State applies for assignment of one of the Operating Administration's environmental review responsibilities, the general multimodal environmental review responsibilities of the other Operating Administration(s).

(e) *Electronic submissions.* Applications may be submitted electronically to the appropriate Operating Administration.

(f) *Joint application.* A State may submit joint applications for multiple Operating Administrations' responsibilities. A joint application should avoid redundancies and duplication of information to the maximum extent practicable. In its application, the State must distinguish the projects or classes of projects it seeks to assume by transportation mode. A joint application must provide all of the information required by each Operating Administration for which a State is seeking assignment. A State must submit joint applications to FHWA.

(g) *Requests for additional information.* The appropriate Operating Administration(s) may request that the State provide additional information to address any deficiencies in the application or clarifications that may be needed prior to determining that the application is complete.

§ 773.111 Application review and approval.

(a) The Operating Administration(s) must solicit public comment on the pending request and must consider comments received before rendering a

decision on the State's application. Materials made available for this public review must include the State's application, a draft of the MOU, and a list of responsibilities sought by the State that the Operating Administration(s) proposes to retain. The notification may be a joint notification if two or more Operating Administrations are involved in the assignment for a project or a class of projects.

(b) If the Operating Administration(s) approves the application of a State, then the Operating Administration(s) will invite the State to execute the MOU.

(c) The Administrator for the appropriate Operating Administration will be responsible for approving the application and executing the MOU on behalf of the Operating Administration.

(d) The State's participation in the Program is effective upon full execution of the MOU. The Operating Administration's responsibilities under NEPA and any other environmental laws may not be assigned to or assumed by the State prior to execution of the MOU with the exception of renewal situations under § 773.115(g) of this part.

(e) The MOU must have a term of not more than 5 years that may be renewed pursuant to § 773.115 of this part.

(f) The State must publish the MOU and approved application on its Web site and other relevant State Web sites and make it reasonably available to the public for inspection and copying.

§ 773.113 Application amendments.

(a) After a State submits its application to the appropriate Operating Administration(s), but prior to the execution of the MOU(s), the State may amend its application at any time to request the addition or withdrawal of projects, classes of projects, or environmental review responsibilities consistent with the requirements of this part.

(1) Prior to submitting any such amendment, the State must coordinate with the appropriate Operating Administration(s) to determine if the amendment represents a substantial change in the application to such an extent that additional notice and opportunity

for public comment is needed. The Operating Administration is responsible for making the final decision on whether notice and public comment is needed and whether to provide one opportunity (pursuant to § 773.107(b)) or two opportunities (pursuant to § 773.107(b) and § 773.111(a)) for public comment. The Operating Administration will make this determination based on the magnitude of the changes.

(2) If the Operating Administration determines that notice and solicitation of public comment is needed pursuant to § 773.107(b), the State must include copies of all comments received, responses to substantive comments, and note the changes, if any, that were made in response to the comments.

(b) After the execution of the MOU(s) or renewal MOU(s), a State may amend its application to the appropriate Operating Administration(s) to request additional projects, classes of projects, or more environmental review responsibilities consistent with the requirements of this part.

(1) Prior to requesting any such amendment, the State must coordinate with the appropriate Operating Administration(s) to determine if the amendment represents a substantial change in the application information to the extent that additional notice and opportunity for public comment is needed. The Operating Administration is responsible for making the final decision on whether notice and public comment are needed and whether to provide one opportunity (pursuant to § 773.107(b) or § 773.111(a)) or two opportunities (pursuant to § 773.107(b) and § 773.111(a)) for public comment. The Operating Administration will make this determination based on the magnitude of the changes.

(2) If the Operating Administration determines that notice and solicitation of public comment is required pursuant to § 773.107(b), the State must include copies of all comments received, responses to substantive comments, and note the changes, if any, that were made in response to the comments.

(3) The Operating Administration is responsible for making the final decision on whether to accept the amendment and whether an amendment to the MOU is required. Amendments do

not change the expiration date of the initial or renewal MOU.

§ 773.115 Renewals.

(a) A State that intends to renew its participation in the Program must notify the appropriate Operating Administration(s) at least 12 months before the expiration of the MOU.

(b) Prior to requesting renewal, the State must coordinate with the appropriate Operating Administration(s) to determine if significant changes have occurred or new assignment responsibilities are being sought that would warrant statewide notice and opportunity for public comment prior to the State's submission of the renewal package. The Operating Administration is responsible for making the final decision on whether the State should engage in statewide notification prior to its submittal. The Operating Administration will make this determination based on the magnitude of the change(s) in the information and/or circumstances.

(c) The renewal package must:

(1) Describe changes to the information submitted in the initial Program application;

(2) Provide up-to-date certifications required in § 773.109(a)(6) and (7) of this part for the applicable Operating Administration(s), if up-to-date certifications are needed or if the necessary State laws have termination dates that would occur before the end of a renewal period;

(3) Provide evidence of the statewide public notification, if one was required under paragraph (b) of this section, and include copies of all comments received, responses to substantive comments, and note the changes, if any, that were made to the renewal package in response to the comments; and

(4) Include the State Governor's (or in the case of District of Columbia, the Mayor's) signature approving the renewal package. For the Secretary's responsibilities with respect to highway projects, the top ranking transportation official in the State who is charged with responsibility for highway construction may sign the renewal package instead of the Governor.

(d) A State must submit a renewal package no later than 180 days prior to the expiration of the MOU.

(e) The Operating Administration(s) may request that the State provide additional information to address any deficiencies in the renewal application or to provide clarifications.

(f) The Operating Administration(s) must provide FEDERAL REGISTER notification and solicit public comment on the renewal request and must consider comments received before approving the State's renewal application. Materials made available for this public review will include the State's original application, the renewal package, a draft of the renewal MOU, a list of responsibilities sought by the State that the Operating Administration proposes to retain, and auditing and monitoring reports developed as part of the Program. The notification may be a joint notification if two or more Operating Administrations are involved in the assignment for a project or a class of projects.

(g) In determining whether to approve the State's renewal request, the Operating Administration will take into account the renewal package, comments received if an opportunity for public comments was provided in accordance with paragraph (f) of this section, the auditing and monitoring reports, and the State's overall performance in the Program. If the Operating Administration(s) approves the renewal request, then the Operating Administration(s) will invite the State to execute the renewal MOU. The Administrator for the appropriate Operating Administration will be responsible for approving the application and executing the renewal MOU on behalf of the Operating Administration. The renewal MOU must have a term of not more than 5 years, and the State must publish it on the State's DOT Web site and other relevant State Web site(s).

(h) At the discretion of the Operating Administration, a State may retain temporarily its assigned and assumed responsibilities under a MOU after the expiration of the MOU, where the relevant Operating Administration(s) determines that:

(1) The State made a timely submission of a complete renewal application

in accordance with the provisions of this section;

(2) The Operating Administration(s) determines that all reasonable efforts have been made to achieve a timely execution of the renewal; and

(3) The Operating Administration(s) determines that it is in the best interest of the public to grant the continuance.

§ 773.117 Termination.

(a) *Termination by the Operating Administration.* An Operating Administration(s) that approved the State's participation in the Program may terminate the State's participation if the Operating Administration(s) determines that the State is not adequately carrying out the responsibilities assigned to the State. Examples of situations where such a finding may be made include: persistent neglect of, or noncompliance with, any Federal laws, regulations, and policies; failure to address deficiencies identified during the audit or monitoring process; failure to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities assumed; intentional noncompliance with the terms of the MOU(s); and persistent failure to adequately consult, coordinate, and/or take into account the concerns of other Operating Administrations, when applicable, and appropriate Federal, State, tribal, and local agencies with oversight, consulting, or coordination responsibilities under Federal environmental laws and regulations.

(1) The Operating Administration(s) may rely on the auditing and monitoring reports as sources for a finding that the State is not adequately carrying out its responsibilities. The Operating Administration(s) may also rely on information on noncompliance obtained outside the auditing and monitoring process.

(2) The Operating Administration(s) may not terminate a State's participation without providing the State with notification of the noncompliance issue that could give rise to the termination, and without affording the State an opportunity to take corrective action to address the noncompliance issue. The Operating Administration(s) must provide the State a period of no less than

thirty (30) days to take the corrective actions. The Operating Administration(s) is responsible for making the final decision on whether the corrective action is satisfactory.

(b) *Termination by the State.* The State may terminate its participation at any time by notifying the Secretary no later than 90 days prior to the proposed termination date. The notice must include a draft transition plan detailing how the State will transfer the projects and responsibilities to the appropriate Operating Administration(s). Termination will not take effect until the State and the Operating Administration(s) agree, and the Operating Administration(s) approve a final transition plan. Transition plans must include:

(1) A list of projects and their status in the environmental review process that the State will return to the Operating Administration(s);

(2) A process for transferring files on pending projects;

(3) A process for notifying the public that the State will terminate its participation in the Program and a projected date upon which this termination will take effect;

(4) Points of contacts for pending projects; and

(5) Any other information required by the Operating Administration(s) to ensure the smooth transition of environmental review responsibilities and prevent disruption in the environmental reviews of projects to the maximum extent possible.

(c) *Termination by mutual agreement.* The State and the Operating Administration(s) may agree to terminate assignment on a specific date before the expiration of the MOU. Termination will not take effect until the State and the Operating Administration(s) agree, and the Operating Administration(s) approve a final transition plan. Transition plans must include the information outlined in paragraphs (b)(1)–(5) of this section.

(d) *Effect of termination of highway responsibilities.* Termination of the assignment of the Secretary's environmental review responsibilities with respect to highway projects will result in the termination of assignment of environmental responsibilities for railroad,

public transportation, and multimodal projects.

APPENDIX A TO PART 773—EXAMPLE LIST OF THE SECRETARY'S ENVIRONMENTAL REVIEW RESPONSIBILITIES THAT MAY BE ASSIGNED UNDER 23 U.S.C. 327

FEDERAL PROCEDURES

NEPA, 42 U.S.C. 4321 *et seq.*

Regulations for Implementing the Procedural Provisions of NEPA at 40 CFR parts 1500–1508.

FHWA/FTA environmental regulations at 23 CFR part 771.

FRA's Procedures for Considering Environmental Impacts, 64 FR 28545, May 26, 1999 and 78 FR 2713, Jan. 14, 2013.

Clean Air Act, 42 U.S.C. 7401–7671q. Any determinations that do not involve conformity.

Efficient Environmental Reviews for Project Decisionmaking, 23 U.S.C. 139.

Noise

Noise Control Act of 1972, 42 U.S.C. 4901–4918.

Airport Noise and Capacity Act of 1990, 49 U.S.C. 47521–47534.

FHWA noise regulations at 23 CFR part 772.

Wildlife

Endangered Species Act of 1973, 16 U.S.C. 1531–1544.

Marine Mammal Protection Act, 16 U.S.C. 1361–1423h.

Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f.

Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d.

Migratory Bird Treaty Act, 16 U.S.C. 703–712.

Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d.

Historic and Cultural Resources

National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*

Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa–470mm.

Archeological and Historic Preservation Act, 16 U.S.C. 469–469c.

Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001–3013; 18 U.S.C. 1170.

Social and Economic Impacts

American Indian Religious Freedom Act, 42 U.S.C. 1996.

Farmland Protection Policy Act, 7 U.S.C. 4201–4209.

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Water Resources and Wetlands

Clean Water Act, 33 U.S.C. 1251–1387.
Section 404, 33 U.S.C. 1344
Section 401, 33 U.S.C. 1341
Section 319, 33 U.S.C. 1329
Coastal Barrier Resources Act, 16 U.S.C. 3501–3510.
Coastal Zone Management Act, 16 U.S.C. 1451–1466.
Safe Drinking Water Act, 42 U.S.C. 300f–300j–26.
Rivers and Harbors Act of 1899, 33 U.S.C. 403.
Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287.
Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921.
Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)(14).
FHWA wetland and natural habitat mitigation regulations at 23 CFR part 777.
Flood Disaster Protection Act, 42 U.S.C. 4001–4130.

Parklands

Section 4(f), 49 U.S.C. 303; 23 U.S.C. 138.
FHWA/FTA Section 4(f) regulations at 23 CFR part 774.
Land and Water Conservation Fund, 16 U.S.C. 460l–4–460l–11.

Hazardous Materials

Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675.
Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9671–9675.
Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992k.

Executive Orders Relating to Eligible Projects

E.O. 11990, *Protection of Wetlands*
E.O. 11988, *Floodplain Management*
E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*
E.O. 13112, *Invasive Species*

PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(f))

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774.3 Section 4(f) approvals.
774.5 Coordination.
774.7 Documentation.
774.9 Timing.
774.11 Applicability.
774.13 Exceptions.
774.15 Constructive use determinations.
774.17 Definitions.

AUTHORITY: 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2); 49 U.S.C. 303; Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144); 49 CFR 1.48 and 1.51.

SOURCE: 73 FR 13395, Mar. 12, 2008, unless otherwise noted.

§ 774.1 Purpose.

The purpose of this part is to implement 23 U.S.C. 138 and 49 U.S.C. 303, which were originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as “Section 4(f).”

§ 774.3 Section 4(f) approvals.

The Administration may not approve the use, as defined in § 774.17, of Section 4(f) property unless a determination is made under paragraph (a) or (b) of this section.

(a) The Administration determines that:

(1) There is no feasible and prudent avoidance alternative, as defined in § 774.17, to the use of land from the property; and

(2) The action includes all possible planning, as defined in § 774.17, to minimize harm to the property resulting from such use; or

(b) The Administration determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a *de minimis* impact, as defined in § 774.17, on the property.

(c) If the analysis in paragraph (a)(1) of this section concludes that there is no feasible and prudent avoidance alternative, then the Administration may approve, from among the remaining alternatives that use Section 4(f) property, only the alternative that:

(1) Causes the least overall harm in light of the statute’s preservation purpose. The least overall harm is determined by balancing the following factors:

(i) The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);

(ii) The relative severity of the remaining harm, after mitigation, to the